

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARKEL AMERICAN INSURANCE COMPANY,

Plaintiff,

-against-

**DARLENE WALTERS, JOHN LICHOROWIC and WB
PAYNE CO., INC.,**

Defendants

ANSWER

Civil Action No.: 11cv-
1347-GLS-ATB

Defendant WB Payne Co., Inc. (hereinafter “WB Payne” or “Answering Defendant”), as and for its Answer to the Complaint of Plaintiff, allege as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Plaintiff’s Complaint.
2. Denies the allegations contained in Paragraphs 31 and 32 of the Plaintiff’s Complaint.
3. Denies the allegations contained in Paragraphs 3, 4, 5, 6, 7, 9, and 28 of the Plaintiff’s Complaint and otherwise refers questions of law to the Court for determination.
4. Admits the allegations contained in Paragraphs 8, 25, 26, and 30 of the Plaintiff’s Complaint.
5. With respect to Paragraph 27 of Plaintiff’s Complaint, repeat each and every denial and denial upon information and belief previously asserted.
6. With respect to Paragraph 29 of Plaintiff’s Complaint, admits that the Insureds John Lichorowic and Darlene Walters allege that the application for insurance submitted to MAIC was not submitted properly but denies the substance of the allegation that the application for insurance submitted to MAIC was not submitted properly.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

If Plaintiff was caused to sustain damage at the time and place as set forth in Plaintiffs' Complaint, it was due to the culpable conduct of a person or persons and/or entities other than the Answering Defendant.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a cause of action as against the Answering Defendant.

THIRD AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over this matter.

FOURTH AFFIRMATIVE DEFENSE

WB Payne Co., Inc. was requested to procure coverage for Darlene Walters and/or John Lichorowic for their vessel and WB Payne Co., Inc. procured said coverage. The policy that was procured and renewed clearly and unambiguously contained a "lay up" provision.

WHEREFORE, the Answering Defendant hereby demands Judgment as follows:

- (a) dismissal of Plaintiff's Complaint;
- (b) declaring that WB Payne Co., Inc. is not liable to Plaintiff or to codefendants for the damages alleged; and
- (c) granting such other and further relief as the Court deems just, proper and equitable, including the costs and disbursements expended in the defense of this action.

DATED: June 28, 2012

BOWITCH & COFFEY, LLC

By: 

Daniel W. Coffey
Bar Roll No.: 506125

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